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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203, 207, 220, 221, 232, 235, 236 and 241

[Docket No. FR-5805-P-01]

[RIN 2502-AJ26]

**Federal Housing Administration (FHA): Standardizing Method
of Payment for FHA Insurance Claims**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a cost-savings measure to update HUD's regulations regarding the payment of FHA insurance claims in debentures. Section 520(a) of the National Housing Act affords the Secretary discretion to pay insurance claims in cash or debentures. Although HUD has given mortgagees the option to elect payment of FHA insurance claims in debentures in some sections of HUD's regulations, HUD has not paid an FHA insurance claim under these regulations using debentures in approximately 5 years. This proposed rule would amend applicable FHA regulations to bring consistency in determining the method of payment for FHA insurance claims.

DATES: Comment Due Date: **[Insert date 60 days from the date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free

Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information about: HUD’s Single Family Housing program, contact Ivery Himes, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9172, Washington, DC, 20410; telephone number 202-708-1672; HUD’s Multifamily Housing program, contact Sivert Ritchie, Multifamily Claims Branch, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6252, Washington, DC 20410-8000; telephone number 202-708-2510. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

Prior to the Housing and Urban Development Act of 1965, the Secretary was required to pay insurance claims on mortgages or loans insured under the National Housing Act in debentures. Section 215 of the Housing and Urban Development Act of 1965 amended Title V of the National Housing Act to add a new section which authorized the Secretary, in his discretion, to pay insurance claims on mortgages or loans insured under any section of the National Housing Act in cash or debentures.¹

¹ Section 520(a) of the National Housing Act (12 U.S.C. 1735d) states: “Notwithstanding any other provision of this Act with respect to the payment of insurance benefits, the Secretary is authorized, in his discretion, to pay in cash or in debentures any insurance claim or part thereof which is paid on or after the date of the enactment of the Housing and Urban Development Act of 1965 on a mortgage or a loan which was insured under any section of this Act either before or after such date.”

In some of FHA's regulations in 24 CFR, subtitle B, chapter II, HUD has discretionarily provided mortgagees with the ability to request and receive payment of an insurance claim on a loan insured under the National Housing Act in debentures. As a result of these regulations, HUD has needed to maintain an interagency agreement with Treasury, which is the agency responsible for issuing and servicing debentures, costing HUD over \$206,000 per year, despite the fact that there are no current debentures being serviced by Treasury for HUD, and HUD has not paid an FHA insurance claim in debentures in approximately 5 years.

II. This Proposed Rule

HUD proposes to use the authority provided in section 520(a) of the National Housing Act to reflect the Secretary's discretion to pay FHA insurance claims in cash or debentures. This change will enable HUD, in the future, to make a fiscally responsible decision about maintaining the costly interagency agreement with Treasury.

This rule proposes to amend the following sections to bring consistency in the payment of FHA insurance claims among FHA programs: §§ 203.400, 203.476, 203.478, 207.259, 220.751, 220.822, 221.762, 232.885, 235.215, 236.265, 241.261, 241.885 and 241.1205. As a result of these changes, § 220.760 will be eliminated because it will be unnecessary.

III. Findings and Certifications

Regulatory Review - Executive Order 13563

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify

and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The broader purposes of the reform to FHA's regulations regarding Secretarial discretion of the type of FHA insurance claim payment are to eliminate unnecessary spending and bring consistency regarding the payment of insurance claims across all FHA programs. As discussed in the preamble, the interagency agreement with Treasury costs HUD over \$206,000 per year, even though HUD currently does not have any debentures for payment of FHA insurance claims in circulation, and has not made a payment in debentures in approximately 5 years for these insurance claims. In addition, different FHA programs treat payment of FHA insurance claims differently, and this proposed rule will simplify the regulations so that the authority to determine the method of claim payment always rests with the Secretary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule only changes the party which has the authority to determine the method of payment of FHA single family, multifamily, and healthcare insurance claims.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Housing in Older, Declining Areas is 14.123; Mortgage Insurance-Rental Housing is 14.134; Mortgage Insurance-Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Interest Rate; Mortgage Insurance-Rental Housing in Urban Renewal Areas is 14.139; Supplemental Loan Insurance-Multifamily Rental Housing is 14.151; Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155.

Paperwork Reduction Act

This proposed rule reduces information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

List of Subjects:

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development; Mortgage insurance; Reporting and recordkeeping requirements; Solar energy.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 220

Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs-health, Loan programs-housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs-housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs-housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 241

Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 203, 207, 220, 221, 232, 235, 236, and 241 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z-16, 1715u, 1717z-21 and 1735d; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

2. Revise § 203.400, to read as follows:

§ 203.400 Method of payment.

(a) If the application for insurance benefits is acceptable to the Commissioner, payment of the insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(b) An insurance claim paid on a mortgage insured under section 223(e) of the National Housing Act shall be paid in cash from the Special Risk Insurance Fund.

3. Revise § 203.476(g), to read as follows:

§ 203.476 Claim application and items to be filed.

* * * * *

(g) All property of the borrower held by the lender or to which it is entitled and, if the Commissioner elects to make payments in debentures, all cash held by the lender or to which it is entitled, including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness;

* * * * *

4. Revise § 203.478(c), to read as follows:

§ 203.478 Payment of insurance benefits.

* * * * *

(c) Method of payment. Payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

5. The authority citation for part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1709(c)(1), 1713, 1715(b) and 1735d; 42 U.S.C. 3535(d).

6. Amend § 207.259 by revising paragraph (a), to read as follows:

§ 207.259 Insurance Benefits.

(a) Method of payment. (1) Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to the Commissioner in accordance with requirements in § 207.258, payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(2) An insurance claim paid on a mortgage insured under section 223(e) of the National Housing Act shall be paid in cash from the Special Risk Insurance Fund.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT

7. The authority citation for part 220 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k and 1735d; 42 U.S.C. 3535(d).

8. Revise § 220.751(a), to read as follows:

§ 220.751 Cross-reference.

(a) All of the provisions of subpart B, part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except § 207.256b Modification of mortgage terms.

* * * * *

§ 220.760 [Removed]

9. Remove § 220.760.

§ 220.822 [Amended].

10. In § 220.822, remove and reserve paragraph (b)

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE—SAVINGS CLAUSE

11. The authority citation for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715l and 1735d; 42 U.S.C. 3535(d).

§ 221.762 [Amended].

12. In § 221.762, remove and reserve paragraph (a).

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

13. The authority citation for part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, 1735d and 1735f-19; 42 U.S.C. 3535(d).

14. Revise § 232.885(a), to read as follows:

§ 232.885 Insurance benefits.

(a) Method of payment. Payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

15. The authority citation for part 235 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z and 1735d; 42 U.S.C. 3535(d).

16. Revise § 235.215, to read as follows:

§ 235.215 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Secretary, the insurance claim shall be paid in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

17. The authority citation for part 236 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-1 and 1735d; 42 U.S.C. 3535(d).

§ 236.265 [Amended].

18. In § 236.265, remove and reserve paragraph (a).

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

19. The authority citation for part 241 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-6 and 1735d; 42 U.S.C. 3535(d).

20. Revise § 241.261, to read as follows:

§ 241.261 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to multifamily loans insured under this subpart.

21. Revise § 241.885(a), to read as follows:

§ 241.885 Insurance benefits.

(a) Method of payment. Payment of insurance claims shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

* * * * *

22. Revise § 241.1205, to read as follows:

§ 241.1205 Payment of insurance benefits.

All the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to an equity or acquisition loan insured under subpart F of this part.

Dated: January 15, 2015

Biniam Gebre
Acting Assistant Secretary for Housing—
Federal Housing Commissioner

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